Mark S. Hankins

June 1, 2007

**Federal Trade Commission
Office of the Secretary
Room H-135 (Annex N)
600 Pennsylvania Avenue, NW
Washington, DC 20580**

**RE: Debt Collection Workshop
Comment, Project No. P074805**

Dear Commissioners:

As a hobby, I frequent a number of online bulletin boards where the subject is credit and debt. I've been known to answer a question or two, but I also do a lot of reading. Individuals come to these boards at all stages in their lives and with all sorts of problems. Others who have done well come and explain how to do things right.

I see many abusive situations that occur over and over, particularly with the still-evolving debt buying industry. Among the most pernicious and pervasive of the abuses is that of "reaging" collections accounts, along with two other closely allied practices designed to deprive consumers of their rights. Keep in mind that although the bankruptcy process is available to consumers, Congress and the several states have essentially decreed through various other mechanisms (the FCRA and state statutes of limitations) that certain forms of debt relief occur merely by the passage of time even in the absence of bankruptcy. Debt buyers act improperly to circumvent such protections primarily through three practices.

The key practice is reaging. Reaging works as follows: the consumer defaults on a debt, which duly appears on the consumer's credit reporting agency (CRA) reports for the full 7.5 years permitted under the FCRA. Sometime during that period, the debt is often sold one or more times, most often by simply including it in a computerized list-—the purchaser receives no actual documentation, only the right to purchase supporting documents at a later time if needed. The purchaser of the debt either places a derogatory

tradeline on the consumer’s reports with one or more of the major CRAs at the time of purchase, or perhaps waits to place a tradeline until a propitious time. In any case, when the purchaser places the tradeline, it is placed with an inaccurate, much more recent date of last activity (DOLA) and more importantly, date of first delinquency (DOFD). The DOFD is the measuring date for when the debt must be deleted by the CRAs, so an inaccuracy in the direction of recency can either cause the debt to be shown when it would not otherwise be, or skew scoring models so that the consumer’s credit score is inordinately lowered by virtue of a "new" delinquency that is actually an old delinquency which would ordinarily carry much less weight in the scoring models.

Closely allied to the “reaging” problem is what I will call “lurking”, a practice which allows debt buyers to assert often insurmountable leverage against the consumer. When a debt buyer purchases an account, the debt buyer often refrains from placing a tradeline until the debt buyer’s data-mining efforts indicate that the debtor is attempting to purchase a home. Typically this awareness occurs because the debt buyer purchases marketing lists of consumers who have applied for mortgages and vets those lists against its own internal list(s) of debtors. Once home-buying activity is detected, the debt buyer places the tradeline in an effort to force the debtor to pay the debt prior to closing. Most mortgage programs will require such a debt to be resolved by payment or deletion prior to closing (consumers’ own direct evidence regarding nonliability or unenforceability will not be accepted to negate the effect of the tradeline). The “new” negative tradeline will also typically result in an unacceptably low FICO score for the mortgage product initially contemplated, so the consumer is not only out the money paid to the debt buyer, but also faces less favorable terms for the contemplated mortgage. Often these changes mean the difference between the purchase occurring and not occurring. The debt buyers’ practices therefore have a negative impact not only on consumers but on the realty and mortgage lending industries.

The third debt buyer practice is one that facilitates reaging by making it more difficult to detect. Debt buyers frequently change the account numbers associated with accounts they have purchased. The debt buyer will either change a digit or two of a bank card number or assign a whole new number to the debt. This practice both confuses consumers and confounds the CRAs' software's built-in safeguards against the display of obsolete tradelines.

All three practices go hand in hand to further the debt buyers' impermissible objectives of using credit reporting to collect accounts that are beyond the time horizons set by Congress and the several states.

Ironically, many times the purported debtors are not the actual debtors due to confusion with regard to similar names, identity fraud or presence on the account as an authorized user rather than as a party having contractual responsibility. Even where identity theft occurred and was pursued and properly documented, the passage of time has often rendered police reports and other documentation that would support the consumer's position unavailable. In other cases the underlying debt was long ago paid, and through clerical error or otherwise a record has been perpetuated in the database of one or more debt buyers. Again, in situations like this the consumers' own records showing nonliability are unlikely to reach back the requisite number of years.

One relatively simple approach to the enforcement of the debt buyers' FCRA and FDCPA obligations would be to effectively police the reporting of account numbers. Even where accounts no longer appear on consumers' reports due to obsolescence, that information is still carried in the CRAs' databases. The FTC could act within its rulemaking authority by requiring that debt buyers report account numbers accurately and that CRAs, in addition to rejecting the placement of tradelines associated with obsolete account numbers also report efforts to place them to the FTC and take affirmative action to prevent further attempts at circumvention of the debt buyers' FCRA and FDCPA obligations when such efforts are detected. Debt buyers can rightly be held strictly liable for knowledge of actual account numbers and the key dates associated with them and their approach by law should be "when in doubt, don't report the account."

The FTC has already shut down one company, CAMCO that tread far over the line in its debt-buying practices. Others, such as NCO, have also come under stern scrutiny. Nonetheless consumers continue to report ongoing abuses by other companies--if not to the FTC and attorneys general directly, then certainly on reputable messageboards such as creditboards.com.

The implosion of the subprime mortgage market illustrates not only that those with unfairly blemished credit are taken advantage of, it also illustrates that the harsh credit terms that result from improper reporting and the extortion of payment for otherwise uncollectable debt create situations where consumers are made likelier to default on new or existing mortgages. It is time for simple, systemic solutions to problems that affect the lives of millions of Americans and negatively impact the economy in numerous ways.

Thank you for your consideration of my comments.

Sincerely,

Mark S. Hankins, Esq.